

REMARKS

The objection to Claim 1 has been addressed.

The rejections of Claims 1-3, 5 and 6 as being anticipated by Miyagi under 35 U.S.C. §102(b) and of Claims 4 and 7 as being unpatentable over Miyagi under 35 U.S.C. §103(a) are traversed, and reconsideration is respectfully requested.

The members 30, 36, 37, 38 of Miyagi are not exhaust flaps of a vehicle exhaust system. They are the secondary air control valve and diaphragms and body of that valve. Quite clearly they do not constitute or function as exhaust flaps.

The Office Action asserts the teaching of a plurality of engine characteristic curves stored in the computer 22. The Examiner is requested to point out where in the Miyagi disclosure even one engine characteristic curve is disclosed. Fig. 4 is not a store engine characteristic diagram, and such a diagram is not described at col. 2, lines 31-43 or at col. 5, line 60 to col. 6, line 2. More importantly, applicants request a fuller explanation of where Miyagi teaches the use of gear-dependent control. Applicants submit that there is no such teaching and the reason is not difficult to explain. Simply stated, the Miyagi patent has nothing whatsoever to do with exhaust flap control.

More particularly, the control system in Miyagi is for adjusting the amount of secondary air fed to the exhaust system for exhaust gas purification.

Consequently, this system teaches nothing about a method or system which employs the engaged gear as a variable for triggering the exhaust flaps. Instead, the so-called exhaust flaps of the Miyagi system are arranged on the intake manifold of the engine. As one of ordinary skill knows, exhaust flaps, by their very nature, are on the hot exhaust side and are not controlled, as is the Miyagi system, by A/F sensors and do not require a clutch signal.

Thus, the suggestion that the Miyagi system would have been obvious to modify to switch between street vehicle operation and racecar operation based on stored engine characteristic maps is totally without foundation. Only impermissible hindsight and a misconstruing of the Miyagi patent disclosure permits such a conclusion.

Accordingly, early and favorable action is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and

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please charge any deficiency in fees or credit any overpayments to Deposit
Account No. 05-1323 (Docket #028987.53209US).

Respectfully submitted,

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